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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)
)
Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

To: The Commission

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MAY 16 1996

COMMENTS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

ARCH COMMUNICATIONS GROUP, INC.

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MAY 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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SUMMARY

Arch Communications Group, Inc. ("Arch") is one of the largest providers of wireless messaging services in the United States, providing local, regional, and nationwide service. Consistent with its nationwide presence, Arch is a party to numerous interconnection arrangements. Thus, Arch is qualified to provide informed comment in the instant proceeding.

Arch believes that Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") do not apply to LEC-CMRS interconnection and compensation arrangements. First, Section 253 leaves intact Section 332 of the Act, requiring LEC-CMRS interconnection and preempting state regulation of CMRS charges. Second, Sections 251 and 252 are intended to increase competition in the local exchange marketplace. As CMRS providers are not LECs or LEC competitors, these sections are not intended to apply to LEC-CMRS interconnection. Third, the Commission has kept open a separate proceeding addressing LEC-CMRS interconnection pursuant to Section 332 of the Act. Arch believes that the appropriate forum for resolution of LEC-CMRS interconnection and compensation issues is the pending proceeding (CC Docket No. 95-185) initiated in accordance with Section 332 of the Act. Arch is an active participant in that proceeding.

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Nevertheless, the Notice of Proposed Rule Making ("NPRM") in the instant proceeding raises issues that require attention. Thus, Arch hereby submits comments relating to the scope of the Commission's proposed rules and in response to questions raised with respect to CMRS providers.

Arch supports uniform rules with respect to interconnection and compensation arrangements; the application of consistent rules to arbitrated agreements and statements of generally available terms and conditions; the application of those rules to both intra- and inter- state aspects of interconnection; and the continued ability to invoke complaint procedures under Section 208 of the Act.

Arch supports the Commission's efforts to define "good faith" negotiations, and suggests that the Commission adopt specific rules to prevent LECs' continued avoidance of their reciprocal compensation and non-discrimination obligations. Further, parties to existing agreements should have the opportunity to present those agreements to state commissions to ensure compliance with the requirements of the Act.

Should the Commission determine, notwithstanding the discussion above, that LEC-CMRS interconnection and compensation arrangements are within the purview of Sections 251 and 252 of the Act, Arch emphasizes that narrowband CMRS ("NCMRS") carriers, e.g., providers of paging services, are

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not LECs. NCMRS providers do not provide the exchange access or telephone exchange services provided by LECs.

Consequently, the obligations imposed upon LECs, e.g., resale, network unbundling, and number portability, are not applicable to NCMRS providers.

With respect to compensation arrangements under Section 251, Arch believes that transport and termination charges should be recovered as suggested by Arch in its Comments filed in CC Docket No. 95-185. The costs of dedicated facilities should be recovered on a flat-rate basis and be borne by LECs as incidental to the service provided to the LEC subscriber; the costs of shared facilities should be recovered in a manner that apportions costs among users and enables NCMRS carriers to recover the costs of terminating LEC-originated traffic.

Arch supports the Commission's forthcoming effort to achieve interoperability. Arch suggests that direct interconnection of networks is not required by the Act, and should be voluntary, e.g., where it is mutually beneficial to the carriers.

Finally, Arch reiterates its opposition to discrimination in interconnection arrangements. LECs must demonstrate the reasonableness of any discrimination in rates, terms and conditions associated with interconnection arrangements.

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Washington, D.C. 20554

To: The Commission

Arch Communications Group, Inc. ("Arch"), by its attorneys and pursuant to Sections 1.415 and 1.419^{1/} of the Commission's Rules, hereby files its Comments in the captioned proceeding. The following is respectfully shown:

1. Arch provides wireless messaging services, primarily paging, to over 2 million units in 27 states, and has acquisitions pending that will increase the number to 2.5 million units in 38 states.^{2/} Arch's operations include local, regional, and nationwide common carrier and private paging systems. Arch has negotiated interconnection arrangements in all the states in which it operates with dozens of Local Exchange Carriers ("LECs"), including Bell Operating Companies ("BOCs"), Competitive Local Exchange

2/ Current industry estimates make Arch the fourth largest paging carrier in the United States. It will become the third largest upon consummation of the pending acquisition of Westlink Holdings, Inc. ("Westlink").

Carriers ("CLECs"), and Independent Local Exchange Carriers ("ILECs"). Thus, Arch has significant experience in the negotiation of interconnection agreements and a substantial basis for informed comment in this proceeding.

2. Arch is actively participating in the LEC-CMRS interconnection proceeding initiated earlier this year in CC Docket No. 95-185^{3/} by supporting the Commission's efforts to ensure that Commercial Mobile Radio Service ("CMRS") providers are compensated for terminating LEC-originated traffic, and suggesting interim and long-term compensation approaches.

3. Arch believes that the appropriate forum for the resolution of LEC-CMRS interconnection and compensation issues remains the currently pending proceeding in CC Docket No. 95-185, undertaken pursuant to Section 332 of the Communications Act, and Arch supports the continuation of that proceeding. Nevertheless, Arch recognizes that Sections 251 and 252 of the Telecommunications Act of 1996 (the "1996 Act") also raise interconnection issues that require attention. Arch hereby submits its Comments relating to the proposals set forth in the Notice of Proposed Rule Making adopted in this docket (the

3/ Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rule making, FCC 95-505, CC Docket No. 95-185, released January 11, 1996.

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"NPRM").^{4/} Arch's Comments in this proceeding are limited to:
(a) matters of general applicability to all telecommunications carriers, such as the scope of the Commission's proposed regulations, and (b) matters on which the Commission has specifically requested comments from CMRS providers.^{5/} As requested by the Commission, where the NPRM requests comments on matters previously addressed by Arch in CC Docket No. 95-185, Arch will not restate the positions offered in that proceeding, but requests that the Commission incorporate its Comments^{6/} filed in that proceeding into the record of this proceeding.

^{4/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rule making, FCC 96-182, CC Docket No. 96-98, released April 19, 1996.

^{5/} For ease of review, Arch's Comments are organized in the same fashion as the NPRM. Arch has omitted reference to sections of the NPRM on which its Comments do not pertain.

^{6/} See Comments of Arch Communications Group, Inc.; Reply Comments of Arch Communications Group, Inc., (collectively referred to as "Comments"), filed with respect to CC Docket No. 95-185 on March 4, 1996 and March 25, 1996, respectively.

II. SCOPE OF COMMISSION'S REGULATIONS

4. Arch supports the adoption of explicit rules^{7/} interpreting the obligations imposed under Sections 251 and 252 of the Telecommunications Act of 1996 (the "1996 Act") and addressing the critical elements of concern to narrowband CMRS ("NCMRS") providers^{8/} with respect to interconnection arrangements, e.g., charges for interconnection, compensation for termination of traffic, and non-discrimination in the provision of interconnection services. The 1996 Act places with the FCC the responsibility to promulgate rules to implement Sections 251 and 252 and envisions that state commissions will look to the FCC's rules for guidance in arbitration of disputes and approval of negotiated agreements.^{9/} Arch does not support the alternative proposal of permitting states to set priorities and timetables for implementing the provisions of Sections 251 and 252.^{10/} Arch is concerned that such a decentralized approach will result in too many substantive and procedural differences from state to

^{7/} NPRM at para. 27.

^{8/} E.g., paging companies.

^{9/} 47 U.S.C. §§ 251(d), 252(c).

^{10/} NPRM at para. 33.

state, making compliance by nationwide carriers too difficult and burdensome.

5. Arch supports the Commission's tentative conclusion that the same rules should apply to arbitrated agreements and to statements of generally available terms and conditions.^{11/} Only when carriers voluntarily negotiate an interconnection arrangement and mutually consent to waive the provisions of subsections (b) and (c) of Section 251 setting forth the obligations of LECs and incumbent LECs, may the FCC's rules interpreting those obligations be disregarded.^{12/}

6. Arch agrees with the Commission's tentative conclusion that the rules promulgated pursuant to Section 251 and 252 should relate to both intra- and inter- state aspects of interconnection, service, and unbundling of network elements.^{13/} The 1996 Act envisions a complementary role between state commissions and the FCC under Sections 251 and 252. Specifically, the FCC must promulgate rules to implement the obligations of Section 251. Jurisdiction resides with state commissions to arbitrate disputes and approve negotiated

^{11/} NPRM at para. 36.

^{12/} 47 U.S.C. 252(a)(1).

^{13/} NPRM at para. 37.

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agreements, in accordance with the rules adopted by the FCC. Finally, the FCC must arbitrate disputes if the state fails to act on a request for arbitration. The parallel roles assigned to the FCC and state commissions preclude disparate treatment of intra- and inter- state interconnection issues. Moreover, permitting states to adopt policies inconsistent with FCC policies adopted pursuant to Section 251 of the 1996 Act with respect to intrastate interconnection would defeat the purpose of the 1996 Act -- to increase competition in the local market.

7. The Commission requests comments with respect to what, if any, effect Sections 251 and 252 have on the FCC's enforcement authority under Section 208 of the Communications Act. The Commission's enforcement authority is not modified by the addition of Sections 251 and 252 in the 1996 Act. Nothing in the 1996 Act precludes an aggrieved party's use of the Commission's complaint mechanisms or private actions to resolve disputes arising under the Communications Act. In fact, Section 251(i) of the 1996 Act leaves intact the Commission's authority under Section 201 of the Communications Act which prohibits unjust or unreasonable charges, practices and classifications.

8. In addition, the 1996 Act only envisions state commission resolving disputes concerning a party's failure to negotiate the terms of an interconnection arrangement in good faith; other violations of Sections 251 and 252, e.g., failure to implement an agreement consistent with the 1996 Act, failure to adequately maintain facilities, discrimination between different carriers requesting similar unbundling of network elements or interconnection arrangements, are not encompassed by the state commission arbitration process. Moreover, although a state commission arbitration is provided for by the 1996 Act, nothing in the 1996 Act requires aggrieved parties to request arbitration of their dispute by a state commission. Finally, the enforcement provisions of the Communications Act historically have conferred jurisdiction on the FCC over disputes involving violations of the Communications Act and the Commission's Rules.

**III. OBLIGATIONS IMPOSED BY SECTION
251(c) ON INCUMBENT LECs**

A. Duty to Negotiate in Good Faith

9. Arch supports the Commission's efforts to adopt policies regarding the duty to negotiate in good faith.^{14/} Arch agrees that conditions such as non-disclosure agreements

^{14/} NPRM at para. 47.

and limitation of legal remedies should be deemed violations of this duty.^{15/} The ability of LECs to avoid negotiating interconnection arrangements in good faith should be reduced by the Commission's adoption of specific rules providing for the recovery of costs associated with termination of LEC-originated traffic and the prohibition of continued unreasonable discrimination against NCMRS providers in the negotiation of interconnection arrangements. For specific proposals, Arch refers the Commission to its Comments filed in CC Docket No. 95-185.

10. Parties to interconnection agreements executed prior to the enactment of the 1996 Act should have the option to submit such agreements to state commissions for approval to ensure compliance with the provisions of the 1996 Act. To the extent that such agreements are inconsistent with the 1996 Act, it is contrary to the public interest to permit carriers to be subject to illegal rates, terms or conditions for interconnection until the contract term expires. It is a fundamental principal of contract law that a contract, or portion thereof, which has become illegal is not enforceable. Arch suggests that parties to previously-executed agreements

^{15/} Id.

should have the opportunity to submit such agreements to state commissions for review if either of the parties believes that the agreement may violate Sections 251 or 252 of the 1996 Act.^{16/} If neither party seeks review of the agreement, the agreement may remain in effect until the end of the contract term. Pursuant to the 1996 Act, subsequent agreements would be submitted to the relevant state commission for approval.

B. Interconnection, Collocation and Unbundled Networks

1. Interconnection

11. Arch supports the Commission's tentative conclusion that uniform rules relating to interconnection should be adopted.^{17/} The adoption of uniform rules defining "technical feasibility," number and location of points of required interconnection, and methods of interconnection will assist

^{16/} Arch notes that the 1996 Act appears to require the submission of previously negotiated agreements to state commissions for approval. 47 U.S.C. § 252(a)(1). To the extent that the Commission determines it has the authority to determine that approval is not required in all instances, Arch suggests that approval of previously negotiated agreements may not be necessary where parties to the agreement are satisfied with its rates, terms and conditions. Approval of an agreement which is satisfactory to both parties may prove to be a useless expenditure of limited state commission resources.

^{17/} NPRM at para. 50.

carriers in securing uniform interconnection arrangements for regional and nationwide systems and deploying similar interconnecting equipment in all or most of the states in which the carrier interconnects with the public switched network.

2. Pricing of Interconnection, Collocation and Unbundled Elements

a. Commission's Authority to Set Pricing Principles/Rate Levels/Rate Structure/Discrimination

12. Arch's comments respecting rules relating to the pricing of interconnection relate solely to interconnection arrangements and compensation for termination of telecommunications between LECs and NCMRS providers. Arch supports the Commission's proposal that interconnection rates should be related to cost.^{18/} In its Comments filed in CC Docket No. 95-185, Arch suggested interim and long-term interconnection pricing mechanisms. Arch's Comments address costing methodology, proxies for traffic termination costs to recover such costs on an interim basis, and recovery of costs associated with shared and dedicated facilities. Rather than restate those proposals, Arch incorporates those portions of its Comments into the record in this proceeding.

^{18/} NPRM at para. 123.

13. Further, Arch supports the Commission's tentative conclusion that it has the authority to define what is meant by "reciprocal compensation,"^{19/} and that such guidelines should govern state commissions' arbitration and approval of statements of generally available terms and conditions.^{20/} Finally, Arch supports the adoption of national rules relating to the pricing of interconnection.^{21/} Uniform rules should reduce the types of abuse historically experienced by NCMRS providers and will provide a useful tool to NCMRS carriers required to oppose such discrimination before both the FCC and state commissions, as applicable.^{22/}

14. In its Comments, Arch provided examples in which paging companies have experienced unreasonable discrimination during the negotiation of interconnection arrangements, e.g., exorbitant charges for telephone numbers and charges assessed without cost justification. Arch opposes such discrimination

^{19/} NPRM at para. 117.

^{20/} NPRM at para. 118.

^{21/} NPRM at para. 119.

^{22/} Examples of discrimination against NCMRS providers in the rates, terms and conditions associated with interconnection service were provided in Arch's Comments filed in CC Docket No. 95-185.

and has suggested that the use of publicly filed interconnection agreements may serve to reduce the instances of unjustified discrimination.

**IV. APPLICABILITY OF SECTION 251 OBLIGATIONS
TO CMRS PROVIDERS**

15. The NPRM requests comments on whether LEC-CMRS interconnection arrangements fall within the purview of Section 251 and, if so, under which Section of the Communications Act, e.g., 332 or 251, CMRS carriers would like to proceed with respect to LEC-CMRS interconnection. The Commission also requested comments regarding whether CMRS providers are subject to the obligations set out in Section 251 of the 1996 Act.^{23/}

16. Arch believes that the appropriate forum for the resolution of LEC-CMRS interconnection issues is the proceeding currently pending pursuant to Section 332 of the Communications Act in CC Docket No. 95-185, and that LEC-CMRS interconnection arrangements are not affected by the 1996 Act. First, Section 253 of the 1996 Act expressly provides that Section 332(c)(3)^{24/} of the Communications Act remains intact

^{23/} NPRM at paras. 166-168.

^{24/} 47 U.S.C. § 332(c)(3).

with respect to CMRS providers.^{25/} Section 332(c)(3) preempts state regulation of rates charged by CMRS providers. Presumably, this preemption extends to the rates charged by CMRS providers for termination of LEC-originated traffic.^{26/} Second, Sections 251 and 252 of the 1996 Act are intended to achieve increased competition in the provision of telephone exchange service and exchange access. Thus, the obligations of LECs to unbundle their networks, offer unrestricted resale of their services, and permit collocation, all run to telecommunications carriers seeking to compete with the LECs. Third, the Commission has acknowledged that LEC-CMRS interconnection is separate and distinct from LEC-"LEC competitor" interconnection under Section 251 by maintaining the LEC-CMRS interconnection proceeding initiated in CC Docket No. 95-185.^{27/}

17. Notwithstanding the foregoing, Arch notes that Section 251 could be construed to apply to LEC-CMRS interconnection. First, the 1996 Act obligation on LECs to interconnect with

^{25/} 47 U.S.C. § 253(e).

^{26/} This jurisdictional issue also was discussed in Arch's Comments filed in CC Docket No. 95-185.

^{27/} NPRM at para. 169.

the facilities and equipment of other telecommunications carriers could extend to CMRS carriers. Pursuant to Section 251(a)(1),^{28/} LECs are obligated to interconnect, directly or indirectly, with the facilities and equipment of other telecommunications carriers (including CMRS providers).^{29/} Thus, LECs must interconnect with CMRS, including NCMRS, providers' networks -- regardless of the service the CMRS

^{28/} 47 U.S.C. §251(a)(1).

^{29/} Arch does not believe that LECs are required to interconnect to CMRS providers' networks pursuant to Section 251(c)(2). Section 251(c)(2) requires LECs to provide interconnection to carriers seeking to provide telephone exchange service and exchange access. NCMRS providers such as paging companies do not typically provide traditional exchange access services. Although interstate calls may be terminated on NCMRS carriers' networks, those calls are initiated on another network and simply routed to (by an access service provider) and terminated on the NCMRS carrier's network. Further, Arch agrees with the Commission's tentative conclusion that CMRS providers are not subject to the obligation under Section 251(c)(2) to provide interconnection to requesting telecommunications carriers. NPRM at para. 167. The Commission correctly concludes that CMRS providers are not incumbent LECs and, thus, are not subject to the duties imposed on incumbent LECs, by the 1996 Act. (NPRM at para. 167). It is logical to conclude, therefore, that CMRS providers also are not LECs, and should not be subject to obligations imposed upon LECs under the 1996 Act.

provider seeks to provide as a result of the interconnection.^{30/}

18. Although the provisions of Section 251 relating to a LECs duty to interconnect may extend to interconnection with CMRS networks, the obligations imposed on LECs under Section 251 do not extend to NCMRS providers. As discussed in Section V below, NCMRS carriers do not provide services akin to those provided by LECs, are expressly excluded from the definition of Local Exchange Carrier, and should not be subject to the obligations imposed on LECs.

**V. OBLIGATIONS IMPOSED ON LOCAL EXCHANGE
CARRIERS BY SECTION 251(b)**

A. Resale

19. NCMRS providers do not fall within the definition provided for LECs and, consequently, are not subject to the prohibition on restriction of resale imposed upon LECs under Section 251.^{31/} LECs are defined as persons engaged in the

^{30/} In contrast to Section 251(c)(2), which requires interconnection only with carriers requesting interconnection for the purpose of providing telephone exchange service and exchange access, Section 251(a)(1) places no limitation on the duty to interconnect based upon the end service provided.

^{31/} NPRM at para. 195.

provision of telephone exchange service or exchange access. The term expressly excludes CMRS providers, unless the Commission finds, in a particular instance, that a CMRS provider is providing services akin to those provided by LECs. NCMRS carriers, e.g., paging companies, typically do not provide service akin to that provided by LECs. Paging services currently provided are one-way in nature, and are interconnected to the public switched network only through the facilities of LECs in their areas of operation.

B. Number Portability

20. The Commission has indicated that it will continue to consider number portability issues in connection with its ongoing proceeding in CC Docket No. 95-116.^{32/} However, Arch wishes to reiterate its view that NCMRS providers should not be required under the Communications Act to provide number portability. The 1996 Act imposes the obligation to provide number portability on LECs.^{33/} As discussed above, NCMRS providers are not classified as LECs under the 1996 Act.

^{32/} NPRM at para. 199.

^{33/} Separate and apart from the duty to provide number portability, the Act will require all telecommunications carriers to contribute to the establishment of number portability.

C. Reciprocal Compensation for Transport and Termination of Traffic

21. The Commission requests comment as to what services the recovery for "transport and termination" relates.^{34/} As noted above, Arch believes that NCMRS providers are not LECs or LEC-competitors, and that LEC-NCMRS interconnection, and the rates charged by NCMRS carriers for recovery of costs associated with the termination of LEC-originated traffic, are governed by Section 332 of the Communications Act. The "transport and termination" compensation provision contained within Section 251 relates to the interconnection obligations which are the subject of Section 251 - i.e., interconnection between LECs and their competitors.

22. However, to the extent that the Commission deems LEC-CMRS interconnection is subject to Section 251 of the 1996 Act based upon the inclusion of NCMRS providers in the definition of "Telecommunications Carriers," (as discussed above in Section IV), Arch supports the Commission's observation that the provision implies that separate rates may be charged with respect to transport and termination.^{35/} Arch suggests that

^{34/} NPRM at para. 230.

^{35/} NPRM at para. 231.

transport and termination costs be recovered as recommended in Arch's Comments filed in CC Docket No. 95-185.

**VI. DUTIES IMPOSED ON TELECOMMUNICATIONS
CARRIERS BY SECTION 251(a)**

23. Section 251(a) requires that all telecommunications carriers interconnect, directly or indirectly, with the facilities and equipment of other telecommunications carriers. The Commission requests comment as to what is meant by the phrase "directly or indirectly."^{36/} Arch believes that indirect interconnection of (non-LEC) telecommunications carriers (e.g., two CMRS carriers) satisfies the 1996 Act and is consistent with public policy. First, as the Commission observed, the Act provides for indirect interconnection of two telecommunications carriers, through the interconnection of each to the LEC network. The Commission noted that currently, even absent direct carrier to carrier interconnection, all subscribers of telecommunications carriers are interconnected by this common interconnection with the LEC. Second, a long standing Commission goal is to encourage the development of ubiquitous service to subscribers. Although many carriers are not interconnected directly, all subscribers of carriers interconnected to the LEC's network can reach all subscribers

^{36/} NPRM at para. 248.

of other carriers also interconnected to the LEC network. Based upon the foregoing, Arch suggests that indirect interconnection satisfies the 1996 Act.

24. Arch recommends that carriers be permitted, on a voluntary basis, to establish direct interconnection of their networks where such direct interconnection is mutually beneficial to the carriers. Further, Arch supports the initiation of a future proceeding in which the Commission will oversee and encourage the development of network interoperability standards to achieve more efficient network interconnection between telecommunications carriers pursuant to Section 256 of the 1996 Act.^{37/} Consistent with the previous recommendation, however, Arch suggests that whatever standards for interoperability are established, direct interconnection between telecommunications carriers' networks should remain voluntary, based upon the benefit derived from such agreements by each carrier.

VII. PROVISIONS OF SECTION 252

A. Arbitration Process

25. Arch suggests that the Commission defer the adoption of rules relating to the state arbitration process until such

37/ NPRM at para. 249.

time as the Commission determines whether the state commission arbitration process (and Section 251) apply to LEC-CMRS interconnection arrangements.^{38/}

B. Section 252(i)

26. Arch supports the adoption of rules prohibiting discrimination in the provision of interconnection services.^{39/} As noted above, Arch's Comments filed in CC Docket No. 95-185 addressed unreasonable discrimination experienced by NCMRS carriers in previous negotiations of interconnection arrangements. Arch restates its request that those Comments be incorporated into this proceeding.

27. In addition, Arch notes that, notwithstanding Commission precedent, the 1996 Act appears to prohibit all discrimination in the rates, terms and condition of interconnection arrangements between all telecommunications carriers. Should the Commission determine, based upon precedent, that only unreasonable discrimination is prohibited pursuant to the Communications Act, Arch would support such a conclusion based upon Sections 201 and 202 of the

^{38/} NPRM at para. 265.

^{39/} NPRM at para. 270.